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OFFICE OF PETITIONS

In re Application of :
Quinn et al. :
Application No. 10/799,931 : DECISION REFUSING STATUS
Filed: March 12, 2004 : UNDER 37 CFR 1.47(a)
Attorney Docket No. 021628-000910US:

This is in response to the petition under 37 CFR 1.47(b), filed October 15, 2004 (certificate of mailing dated October 12, 2004), which is being treated as a petition under 37 CFR 1.47(a).¹

The petition is **dismissed**.

Applicants are given TWO (2) MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," and should address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. Failure to respond will result in abandonment of the application. Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed on March 12, 2004, without an executed oath or declaration. Accordingly, on August 12, 2004, the Office mailed a "Notice to File Missing Parts of Nonprovisional Application," requiring an executed oath or declaration, the basic statutory filing fee, additional claim fees and a surcharge. On October 15, 2004 (certificate of mailing dated October 12, 2004), applicants submitted the present

¹A petition under 37 CFR 1.47(b) is inappropriate in this instance because all but two of the inventors have signed the declaration. A petition under 37 CFR 1.47(b) is only appropriate where none of the inventors will sign. Accordingly, the petition will be treated as a petition under 37 CFR 1.47(a).

petition, a declaration executed by 16 of the 18 joint inventors, and paid the requisite fees.

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor. Applicants lack item (1) as set forth above.

As to item (1), it is unclear from the record whether Seog Jae Lee was presented with the complete application papers. Unless Mr. Lee was presented with a complete copy of the application papers, including the specification, claims and drawings, he could not attest that he has "reviewed and understands the application papers," and therefore, could not sign the declaration that he was given. Accordingly, applicants failed to show or provide proof that the nonsigning inventor has refused to sign the declaration. See MPEP 409.03(d). To show that the inventor has refused to join in the application, applicants must show that complete copies of the application papers, including the specification, claims and drawings, were presented to Mr. Lee and that he did not respond to the request that he sign the declaration. The facts surrounding Mr. Lee's refusal to join the application must be submitted by a person with first-hand knowledge of the events.

Further correspondence with respect to this matter should be addressed as follows and **to the attention of Christina Tartera Donnell, Senior Petitions Attorney:**

By mail: Mail Stop Petition
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

By FAX: (703) 872-9306
 Attn: Office of Petitions

By hand: U.S. Patent and Trademark Office
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Telephone inquiries concerning this matter may be directed to the undersigned at (517) 272-3211.

Christina Tartera Donnell

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